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No. 98-873

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

JOHN CRANE, INC.
Petitioner,
v.
JOHN ABATE, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
To the Maryland Court of Special Appeals

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, LAWYERS FOR CIVIL JUSTICE, AND ILLINOIS MANUFACTURERS' ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Motion of the
National Association of Manufacturers,
Lawyers For Civil Justice, and
Illinois Manufacturers' Association
For Leave To File Brief As *Amici Curiae*

Pursuant to Rule 37.2 of the Rules of this Court, the National Association of Manufacturers ("NAM"), Lawyers for Civil Justice ("LCJ"), and the Illinois Manufacturers'

Association ("IMA") respectfully move for leave to file the accompanying *Amicus Curiae* brief in support of John Crane's Petition for a Writ of Certiorari.

NAM is the nation's oldest and largest broad-based industrial trade association. NAM regularly participates as *amicus curiae* in civil litigation raising issues of national concern to the business community. LCJ is a nationwide coalition of defense trial lawyer associations and corporate counsel which frequently appears as *amicus curiae* on important issues affecting the civil justice system and the litigation process. *Amicus* IMA is the oldest and largest state-wide manufacturing association in the United States. It represents a diverse range of Illinois manufacturing and economic interests, including 4,700 Illinois companies equaling more than 80% of the total Illinois manufacturing workforce. IMA often acts as *amicus curiae* on its members behalf on important issues affecting constitutional law, tort law, and public policy that will impact the manufacturing community, such as those raised in the instant case.

If permitted to file their brief in support of Petitioner John Crane, *amici* would address the following points. Increasingly, state and federal courts are subjecting *amici's* members to consolidated mass tort trials without serious regard for preservation of the parties' rights to a fair trial. The proceedings below stand as an exemplar of the denial of fundamental fairness presented by complex, confusing, and inherently prejudicial consolidated proceedings in many other courts across the country. Intervention by this Court is essential

to determine whether or not the proceedings below comported with the requirements of the due process clause so that other courts do not emulate those proceedings without further guidance.

Faced with repetition of perilous proceedings such as those below, *amici's* members increasingly will be forced to enter "blackmail" settlements as the only realistic alternative to vindication on the merits.

At minimum, the specific violations of due process reflected on the record here require this Court to reverse the Maryland Court of Special Appeals and remand for a new trial on the merits. The importance of the Court's grant of Certiorari in this case cannot be overstated as litigants and courts struggle with their conflicting needs in the midst of massive consolidated proceedings: state courts striving to clear crowded court dockets of mass tort litigation and individual litigants attempting to be heard above the cacophony. A decision in this case will have broad, nationwide impact in light of the many mass tort lawsuits now pending around the country and the many to come in the near future. This case is an extreme example of the "mass tort problem" that this Court should take action now to prevent from becoming more commonplace.

Petitioners have consented, but respondents' counsel has refused to consent to the filing of this brief. Therefore, NAM, LCJ, and IMA request leave to file the accompanying brief as *amici curiae*, pursuant to Rule 37.2.(b) of the Rules of this Court.

Respectfully submitted,

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BRIEF OF *AMICI CURIAE*

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STATEMENT OF INTEREST

NAM's nearly 14,000 member companies and subsidiaries, including approximately 10,000 small manufacturers, are in every state and produce about 85 percent of all goods manufactured in the U.S.[1] Through its member companies and affiliated associations, the NAM represents every industrial sector and more than 18 million employees.

IMA is an Illinois not-for-profit corporation founded in 1983. It is the oldest and largest state-wide manufacturing association in the United States and represents a diverse range of Illinois manufacturing and economic interests. More than 4,700 Illinois manufacturing companies currently hold IMA membership, and its members are located in every county of the State. Almost half of the IMA members are small businesses, yet the IMA counts among its members some of the largest manufacturing companies in the United States. More than 80% of the total Illinois workforce works for IMA members. IMA's mission is to preserve and strengthen the Illinois manufacturing base by providing information and advocacy on diverse issues affecting its members' interests.

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[1]As required by Supreme Court Rule 37.6, it is hereby specified that none of the authors of this brief, in whole or in part, served as counsel for a party; and no person or entity, other than the *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

LCJ is a nationwide coalition of defense trial lawyers and corporate counsel sponsored by three national defense bar associations: the Defense Research Institute, the International Association of Defense Counsel, and the Federation of Insurance and Corporate Counsel. LCJ's mission is to work closely with 60 state defense bar associations throughout the United States to restore, promote, and maintain balance in the civil justice system by, among other activities, appearing as *amicus curiae* on important issues affecting the civil justice system and the litigation process.

Many NAM, IMA, and LCJ corporate members have been defendants in tort lawsuits, including consolidated mass tort litigation, and many of the trial lawyers in LCJ have served as their trial counsel in these consolidated cases. In their experience, state courts are using consolidation techniques with increasing frequency and in an increasingly unfair and unreasonable manner, in an effort to clear mass tort litigation from their dockets.

This trend is alarming. Rules and statutes regarding consolidation establish no clear procedures or safeguards for courts to follow to protect litigant rights.[2] The only available

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[2]In Maryland, for example, the consolidation rules are virtually the same as those used in the federal courts *See* Maryland Rule 2-503(a)(1) Consolidation. *See also* P. Niemeyer & L. Schuett, *Maryland Rules Commentary* 340 (2d ed. 1993) (federal decisions are persuasive authority for the interpretation of Maryland rule on consolidation).

federal and state court rulings on the consolidation of mass tort claims are ad hoc, confusing, and in conflict from jurisdiction to jurisdiction, a very grave concern to national businesses.

Although substantial efforts are underway in several different venues to come to grips with mass litigation, [3] to date this Court has not spoken on the minimum procedural safeguards that must be provided in consolidated proceedings to satisfy due process of law. In the absence of direction from this Court, the due process rights of the thousands of litigants caught up in the mass torts maelstrom remain in peril.

STATEMENT OF THE CASE

John Crane, Inc. comes to the Court with due process claims arising from an eight month long trial of consolidated mass tort litigation in Baltimore, Maryland, involving five "illustrative plaintiffs," more than 1300 "common issues" plaintiffs, more than 30 direct and cross-defendants, dozens of third party plaintiffs, and hundreds of asbestos-containing products used in the workplace over a span of more than forty years. The trial court set for resolution in one, multi-phase,

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[3]Letter of January 6, 1998 from Leonidas R. Mechem, Director, Administrative Office of the U.S. Courts to Hon. Paul V. Niemeyer, Chairman, Civil Rules Advisory Committee of the U.S. Judicial Conference, confirming approval by the Chief Justice of the formation of a Mass Torts Working Group; *see also* Pet. for Writ at n.8 (citing 1991 Judicial Conference Ad Hoc Committee on Asbestos Litigation, "appointed by Chief Justice Rehnquist to examine the asbestos litigation crisis.").

consolidated trial: full trial of all issues as to the five illustrative plaintiffs to help the jury understand what an asbestos case was about; a common issues trial as to the 1300 plaintiffs; the claims of all third-party plaintiffs and cross-claimants involving approximately ten to twelve thousand additional cases previously severed from earlier proceedings; and all indemnity claims.

In the midst of this massive undertaking, John Crane tried to a final jury verdict personal injury claims brought by three of the illustrative plaintiffs, Terry Theis, Frederick Glensky, and Carroll Morrow, involving two John Crane products: asbestos-containing gaskets, "broad, flat materials which fit between pipes at flanges to form a leak proof seal," and asbestos-containing packing material, "long, string-like material ... delivered to a worksite in rolls or on spools...used to seal pumps and valves by wrapping the packing around a stem." Reply Brief of Appellant John Crane, Inc. in the Court of Special Appeals of Maryland at 2-3. ("Reply Brf.").

The record showed that dozens of other manufacturers made similar products, and that over the course of their careers, the three illustrative plaintiffs had used gaskets and packing made by several other manufacturers. John Crane contended that the record showed no respirable fibers released from John Crane's gaskets or packing of the type necessary to produce asbestos-related disease. Petition for a Writ of Certiorari at 16, n.16 ("Pet.")

At trial the evidence showed that three illustrative trial plaintiffs were exposed to John Crane gaskets in the course of their employment. The jury found John Crane not liable for its gasket products, but found John Crane liable for its packing products. The jury imposed liability on John Crane as to all three plaintiffs, although John Crane had "argued that there was no evidence that the trial plaintiffs used its packing products." Pet. at 16 n. 16, see also Reply Brf. at 1-6.

The consolidated trial from which these verdicts against John Crane resulted was extremely complex. The products involved ranged from spray-on insulation materials that had a high asbestos content to those in which the asbestos was entirely encapsulated, like John Crane's gasket and packing products. Pet. at 4.

Although the court initially indicated that the consolidated trial would be conducted in three phases, it subsequently ruled that phase one witnesses could not be recalled in later phases. That ruling had the effect of bringing in almost all of the evidence during phase one of the trial. Pet. at 5 n.4.

During trial, the court informed the jury that the trial was a continuation of a trial in which asbestos products already had been found defective and in which asbestos manufacturers already had been found liable. Evidence was admitted regarding many nonparty and third party manufacturers and work sites. Pet. at 5, 16 nn.14 &15. When the illustrative plaintiffs concluded their evidence against John Crane, they had not

presented any testimony, expert or lay, regarding the presence of respirable asbestos fibers caused by the use of John Crane's gaskets or packing. The trial court later permitted the illustrative plaintiffs to reopen their cases to adopt expert evidence offered by cross plaintiffs regarding the release of respirable asbestos fibers from the use of gaskets and packing products. Reply Brf. at 11-12. (referring to cross plaintiff expert witness testimony that tests of John Crane packing found no respirable asbestos fibers. Id. at 12).

At the close of the consolidated trials, the court gave the jury a verdict form with 430 special interrogatories involving more than 70 product categories, but it directed the jury to determine liability only for generic categories of materials rather than for individual products. It did not provide the jury with a product specific verdict interrogatory form to help distinguish one defendant's products from those of another's.

On review, the Maryland Court of Special Appeals upheld the jury verdict of liability against John Crane as to the three illustrative plaintiffs. John Crane had argued, *inter alia*, that the jury erred because there was no evidence that the illustrative plaintiffs were substantially exposed to John Crane's string-like packing products, only that they had been exposed to gaskets. Calling itself "nonplussed," the Court of Special Appeals pointed to a John Crane product catalog, which "lists several pages of asbestos sheet packing, and notes that gaskets can be cut from the sheet packing." App. 19a-20a. The Court then said: "[i]t is apparent that the jury concluded that Theis cut the gaskets he used from sheet packing designed for that purpose." *Id.* As a result, the Court found that the verdict was

not inconsistent with the evidence and that John Crane failed to show that the "jury was so overwhelmed that it was unable to do its job." *Id.*

ARGUMENT

I. Consolidated Mass Tort Trials Are Increasingly Threatening Fundamental Rights To Due Process.

The national business community faces a serious expansion of mass tort litigation in state courts.[4] Judges often consolidate the claims of hundreds of plaintiffs against tens, and

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[4]*See* H. REP. 105-702, H.R. 3789, CLASS ACTION JURISDICTION ACT OF 1998, 105th Cong. 2d Sess. (1998). This exodus into state court may be due, in part, to more highly refined consolidation procedures in federal courts, *See, e.g.,* Rules of Procedure of the Judicial Panel on Multidistrict Litigation; and to the recent trend in federal court decisions requiring more careful adherence to the procedural protections set forth in Federal Rule of Civil Procedure 23 governing class actions, making it more difficult to bring mass tort cases in federal court on a class basis, and making class settlement less likely as the eventual outcome. *See, e.g., Amchem Prods., Inc. v. Windsor,* 117 S.Ct. 2231 (1997); *Broussard v. Meineke Discount Muffler Shops, Inc.,* 155 F. 3d 331 (4th Cir. 1998); *Castano v. American Tobacco Co.,* 84 F.3d 734 *(5th Cir. 1996); In re American Medical Systems,* 75 F.3d 1069 (6th Cir. 1996); *In re Rhone-Poulenc Rorer, Inc.,* 51 F.3d 1293 (7th Cir.), *cert. denied,* 116 S.Ct. 184 (1995).

sometimes hundreds, of out-of-state defendants into one massive lawsuit.[5]

The ability to defend against mass tort claims and to optimize the likelihood of finding the truth depends to a large extent on the ability to fairly present the facts to the jury. In a consolidated action, there is grave risk that the jury will confuse the facts applicable to any particular plaintiff or defendant with those applicable to others. That is particularly true when, as in John Crane's case, other litigants manufacture products that are virtually identical in function, appearance, and use. The more claims and the more litigants, the more likely the jury will find it difficult to distinguish among the facts relevant to the claims and defenses of any party, with enormous adverse consequences for individual defendants.

The rules governing consolidation do not provide any procedural safeguards to guide jurors in making the necessary distinctions. "[C]onsolidation has operated without any carefully articulated statutory or rule-based standards, relying

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[5]*See, e.g., Cimino v. Raymark Indus., Inc.*, 151 F.3d 297 (5th Cir. 1998) (setting aside trial plans for sample groups of asbestos claimants); *Cellucci v. General Motors Corps.*, 706 A.2d 806 (Pa. 1998) (dismissing tort claims against multiple motor vehicle manufacturers for not installing air bags in earlier models); *In re Repetitive Stress Injury Litig.*, 11 F.3d 368 (2d Cir. 1993) (rejecting common trial plans due to lack of commonality among plaintiffs); *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, 793 F. Supp. 1098 (N.D. Ala. 1992) (consolidated proceedings regarding safety of breast implants).

instead on ad hoc judgments by individual judges."[6] Consequently, litigants entangled in these consolidated mass tort proceedings, as John Crane was here, face a grave risk that they will not be provided the procedural protections that are needed to ensure the fair trial that due process guarantees.[7]

In the absence of these safeguards, trial courts as well as reviewing appellate courts, need to provide heightened protection to individual litigants to ensure that due process rights are not lost or overwhelmed by the crush of the consolidated proceeding.[8] Heightened protection of an individual right of constitutional dimension, such as the right to due process, is provided in other situations where unusual

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[6]Richard L. Marcus, *Confronting the Consolidation Conundrum*, 1995 BRIG. YOUNG. UNIV. L. REV. 879, 901; *see* Fed. R. Civ. P. 42; *but see Malcolm v. National Gypsum Co.*, 995 F.2d 346 (2d Cir. 1993) (analyzing asbestos cases according to eight criteria to determine appropriateness of consolidation for common adjudication).

[7]"[P]rocess which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

[8]Commentators as well as courts have long recognized the risks that mass tort consolidated proceedings pose to litigant due process rights and the needs for special protection. *See, e.g.*, Roger H. Trangsrud, *Symposium: Conflict of Laws and Complex Litigation Issues in Mass Tort Litigation: Mass Trials in Mass Tort Cases: A Dissent*, 1989 I. ILL. L. REV. 69; Marcus, *supra* note 12; Francis E. McGovern, *An Analysis of Mass Torts for Judges*, 73 TEX. L. REV.1821, 1838 (1995).

circumstances pose greater than normal risks that important rights may be lost or compromised.[9]

For example, in the class action settlement context, this Court has articulated a need for more rigorous evaluation of the fairness of class action settlements to individual class members in light of the unusual alignment of interests that may exist among class counsel, the settling defendants, and the absent class members.[10] The Court announced the need for heightened protection in the class action context notwithstanding the fact that the class action rule, Federal Rule of Civil Procedure 23, already contains substantial procedural protections and safeguards. It follows with even greater force that there is a need for heightened due process protection in consolidated proceedings, given the lack of any mandated protections and the *ad hoc* nature of the safeguards that may be provided.

A. The Trial Court Failed to Protect John Crane's Due Process Rights to A Fair Trial.

Proceedings in the trial court provide an all too familiar example of the jury confusion, prejudice, and plain error that can occur, and the concomitant deprivation of due process that

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[9]*Cf. United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4 (1938) (discussing need for heightened judicial scrutiny in certain situations).

[10]*Amchem Prods. Inc. v. Windsor*, 117 S.Ct. 2231 (1997).

results, when adequate procedural safeguards are not provided in a complex, consolidated mass tort trial. Experience has shown that thoughtful courts and litigants can craft well tailored procedural protections that suit the needs of the litigation without expending undue judicial resources.

Amici will briefly review some of the crucial deprivations of due process that prevented John Crane from receiving a fair trial, not to reargue the merits, but to demonstrate, explicitly, why this Court's intervention in this case is necessary and appropriate.

1. Failure to Allow Defendants to Participate in the Selection of the Illustrative Plaintiffs Severely Prejudiced John Crane's Right to a Fair Trial.

Ours is an adversarial process. At every stage of the litigation, we rely on the adverse interests of the opposing parties to help guarantee the basic fairness of the process. When the trial court allowed the plaintiffs to select the "illustrative" plaintiffs for full trial without the defendant's participation, fairness and representativeness were sacrificed to expediency. And as might be expected, among those plaintiffs selected for trial were individuals with the most severe, unrepresentative, and atypical illnesses -- which, of course, was greatly to plaintiffs' advantage and defendants' disadvantage. The trial court was obliged by the requirements of due process to allow defendants the opportunity to participate in the process for selecting the illustrative plaintiffs to ensure at least a

modicum of basic fairness.[11] Its failure to do so violated due process.

2. The Unrepresentative Nature of the Illustrative Plaintiffs Violated Due Process.

The use of "bellwether" plaintiffs, representative plaintiffs, or any litigant who stands in the place of others who may be bound by a court's ruling necessarily raises heightened due process concerns, as this Court recently cautioned in the class action context even though procedural protections already exist there.[12]

In consolidated proceedings, the failure to use representative plaintiffs in illustrative trials or common issues trials has been found to be inherently prejudicial, as the Second Circuit found when asbestosis sufferers were paired with illustrative trial plaintiffs suffering from terminal cancer,[13] and to be an outright denial of due process, as the Fifth Circuit

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[11]*See, e.g., In re: Chevron U.S.A. Inc.*, 109 F.3d 1016, 1017 (5th Cir. 1997).

[12]*See, e.g., Amchem Prods., Inc. v. Windsor*, 117 S.Ct. 2231 (1997); *see also In re Asbestos Litig.*, 134 F.3d 668 (5th Cir. 1997), *cert. granted, Ortiz v. Fibreboard, 118 S.Ct. 2339 (1998); In re: Chevron U.S.A. Inc.*, 109 F.3d at 1017.

[13]*Malcolm v. National Gypsum Co.*, 995 F.2d 346, 351 (2d Cir. 1993).

found regarding the selection of unrepresentative bellwether plaintiffs in mass toxic tort litigation.[14]

Here, at a minimum, there is a high probability of prejudice resulting from the selection, as "illustrative" of atypical plaintiffs who had mesothelioma, despite the fact that all claimants suffering from mesothelioma had been excluded from the common claim proceedings. By allowing two out of five extremely sympathetic and inflammatory cases to be tried as "illustrative," when they were not representative of the remaining 1300 common claims, the trial court deprived the defendant of due process of law.[15]

3. The Generic Product Verdict Forms Were Unfair.

In the context of the massive proceeding below, the trial court's submission to the jury of generic product verdict forms obscured specific factual differences among the many products involved in the trial and, in itself, could be found to have deprived John Crane of a fair trial. Since liability was imposed on a general category basis, once the jury found any liability for a product in the "gaskets" or "packing" category, any defense that John Crane might present for its particular product became, in effect, irrelevant. No matter how compelling the facts, how

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[14] *Chevron*, 109 F.3d at 1017.

[15] *See In re: Chevron U.S.A., Inc.*, 109 F.3d 1016 (5th Cir. 1997).

persuasive the science or expert testimony, the generic verdict form the court used created what is essentially a conclusive presumption of liability for the specific product unfortunate enough to fall into that category. But as this Court has warned in the past, conclusive presumptions cannot pass constitutional muster and are inconsistent with due process.[16]

4. Failure to Demarcate Claims, Parties, Evidence, and Phases of Trial Deprived John Crane of a Fair Trial.

Due to the large number of claims, parties, and products, and the disjointed and lengthy proceedings, consolidated trials like that below obfuscate the facts and law, confuse and prejudice the jury, and render a fair trial virtually impossible. Presenting a multitude of cases to the jury at one time over many months creates a dynamic that does not exist in single trials. Thus consolidation often results in outcomes that differ significantly from those which would have occurred in separate, individual trials.[17]

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[16]*See Vlandis v. Kline*, 412 U.S. 441, 446 (1973); *Heiner v. Donnan*, 285 U.S. 312 (1932); *see also Bell v. Burson*, 402 U.S. 535 (1971) (conclusive presumption that uninsured motorist in accident was at fault violated due process); *Stanley v. Illinois*,405 U.S. 645 (1972)(conclusive presumption that unmarried father is unqualified to raise a child violated due process).

[17]Kenneth S. Bordens and Irwin A. Horowitz, *The Limits of Sampling and Consolidation in mass Tort Trials: Justice Improved*

(continued...)

Empirical research has found that consolidation altered the patterns of jury verdicts and awards, making them generally more favorable to the plaintiffs than to the defendants.[18] The plaintiff with the weakest case won higher damages by being linked with the plaintiff with the most serious damages.[19]

* * *

The extraordinary nationwide consequences of the decision below and many like it, the cumulative weight of the errors recited above, and the many other indicia of the confusing and prejudicial nature of the proceedings, compel the conclusion that this case warrants review by this Court.

II. The Due Process Right to a Fair Trial Transcends Expediency.

John Crane fell victim to the pressures of consolidation and the numerous errors of the trial court went uncorrected on appeal. Indeed, the decision of the Maryland Court of Special Appeals fell far short of protecting John Crane's right to a fair trial.

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[17](...continued)
or Justice Altered? 22 LAW & PSYCH. REV. 43, 66 (Spring 1998) (reviewing mock jury research results based on *Cimino* facts).

[18]*Id.*

[19]*Id.* at 59.

As we read the Court of Special Appeals decision, it appears to base its affirmance of the three verdicts against John Crane almost entirely upon a speculative view of the evidence that seems contrary to the physical facts. Moreover, the Maryland Court found John Crane's due process contentions "unconvincing ... absent some concrete indication that the jury was so overwhelmed that it was unable to do its job." Appendix to the Petition for Writ of Certiorari at 19a-20.

Amici do not seek this Court's *de novo* review of the Maryland Court's factual determinations. However, *Amici* emphasize that the record below reflects a state appellate court tempted to preserve the fatally flawed verdicts of a confused jury through speculative reconstruction of what the jury might have concluded.

The jury found John Crane liable on the common issues for packing, but not for gaskets. But, the Court of Special Appeals attempted to justify the jury's further finding that each of the three plaintiffs were exposed to John Crane "packing" notwithstanding that two of them testified they worked only with gaskets, by stringing together a series of assumptions based on a few pages from the thousands of documents in evidence. Thus the court assumed that the jury might have considered a John Crane product catalog that lists several pages of asbestos "sheet packing." And, it said, although plaintiffs testified that they cut gaskets from sheet gasket material, the jury might have concluded that the plaintiffs cut gaskets out of the "sheet packing," thus releasing encapsulated asbestos particles in the dust created by cutting the "sheet packing" to

make gaskets. The net effect was to transmogrify gaskets into packing, rendering meaningless the differences between the two separate and distinct products.[20]

That such a *post hoc* justification (one of several) was even attempted in this case is not so important as the likelihood that without intervention by this Court, such timid enforcement of the right to a fair trial reflects what has been happening in courts throughout the country and is likely to be repeated on many other occasions due to the enormous pressure to force thousands of cases through the pipeline by massive trials or settlements.

The appellate court's search for some basis upon which to affirm the trial court's verdicts highlights the conflict: the need to protect individual litigant due process rights is given less and less attention against the pressure to clear burdensome litigation from court dockets.

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[20]Pet. App. at 39a, 69a, and 81a. Aside from the physical differences between (flat) "gaskets" and (string like) "packing", John Crane pointed out that gaskets were delivered to the work site in standard, pre-cut shapes and sizes and in sheet form which could be cut to fit a particular flange; that packing came in string or rope-like form on rolls or spools and was used to pack or seal valves and pumps; and that both plaintiffs and all other witnesses testified to these essential differences. (Reply Brf. at 9-11).

Amici recognize the traditional deference to be given to state courts in matters affecting their own sovereignty in the administration of justice.[21] Means that state courts may devise to manage their dockets generally are outside the realm of interests into which this Court or other federal courts will delve. Nonetheless, when parochial interests abridge individual rights of constitutional dimension, such as litigant rights to due process, intervention by this Court is required, because it has long been recognized that "the Constitution recognizes higher values than speed and efficiency."[22]

Thus, it is hardly surprising that the first and most basic purpose of our civil justice system was to provide basic fairness -- due process -- to the individual litigant involved in a legal dispute and not to promote efficiency.[23] Due process rights have never been accorded lesser protection because of the large

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[21]Felix F. Stumpf, INHERENT POWERS OF THE COURTS, Ch. IV, § 3 (Nat'l Jud. Coll. 1994) (courts have inherent authority over docket management).

[22]*Vlandis v. Kline,* 412 U.S. 441, 451 (1973) (citation omitted).

[23]*See* Roger H. Trangsrud, *Symposium: Conflict of Laws and Complex Litigation Issues In Mass Tort Litigation: Mass Trials in Mass Tort Cases: A Dissent,* 1989 U. ILL. L. REV. 69, 74 (citing Aristotle, NICHOMACHEAN Ethics Bk.5 (M.Ostwald trans. 1962)).

number of claims to be adjudicated.[24] Just as surely, the Maryland Court of Special Appeals' interest in affirming the trial court's verdict against John Crane and in moving many cases off the docket, does not justify creating constitutional standards peculiar to particular states and compound hypotheses to substantiate a verdict. Such decisions must be subjected to the strictest judicial scrutiny.

The review sought by Petitioner and *amici* in this case is analogous to the exercise of this Court's responsibility to define the limits of state court power to affect the individual rights of out-of-state litigants. Several decades ago when many of the states enacted long-arm statutes purporting to give state courts jurisdiction over a wide range of matters previously not considered within their purview, this Court ensured the protection of litigants' due process rights.[25] As the Court explained, "[t]he restriction on state sovereign power . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause."[26] Here, the interests of members of the national business community in a fair trial on the facts is paramount, and of such import to the basic notions of

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[24]*Philips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985).

[25]*See, e.g., World-Wide Volkswagon v. Woodson*, 444 U.S. 286 (1980); *Hanson v. Denckla*, 357 U.S. 235 (1958); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

[26]*Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.10 (1982).

justice and fair play that are the underpinnings of our society that they warrant protection against the competing state interests in finding expedient ways to dispose of costly mass litigation.

We urge the Court to reverse the Maryland Court of Special Appeals in order to heighten the awareness of all courts to the transcendent importance of protecting the due process rights of litigants -- particularly those litigants involved in docket-straining mass tort litigation now being consolidated in state and federal courts throughout the country.

Conclusion

For the foregoing reasons, the Writ should issue, the case be set for oral argument, and the decision of the Maryland Court of Special Appeals reversed.

Respectfully submitted,

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